

# **EXHIBIT 2**

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1	<u>VOL. II</u>
2	<u>PAGES 178-314</u>
3	<u>EXHIBITS 1-8</u>
4	
5	UNITED STATES DISTRICT COURT
6	FOR THE DISTRICT OF MASSACHUSETTS
7	Civil Action No. 04-11522-WGY
8	
9	STEVEN R. KINCAID
10	Plaintiff,
11	vs
12	BANK OF AMERICA
13	CORPORATION,
14	Defendant.
15	
16	CONTINUED VIDEOTAPE DEPOSITION OF
17	ALEC KOTOPOULOS, taken on behalf of the plaintiff,
18	pursuant to the applicable provisions of the
19	Massachusetts Rules of Civil Procedure, before
20	Patricia L. Henneberry a Certified Shorthand
21	Reporter and Notary Public in and for the
22	Commonwealth of Massachusetts, at the Law Office
23	of David J. Fine 3 Center Plaza, Boston,
24	Massachusetts, on Monday, October 17, 2005
	commencing at 11:08 a.m.

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1	<u>APPEARANCES:</u>
2	Law Office of David J. Fine, (by David
3	J. Fine, Esq.), 3 Center Plaza, Suite 400, Boston,
4	Massachusetts, 02108, for the plaintiff.
5	Edwards & Angell, LLP, (by Siobhan M.
6	Sweeney, Esq.), 101 Federal Street, Boston,
7	Massachusetts, 02110, for the defendant.
8	
9	<u>ALSO PRESENT:</u> National Video
10	Reporters, Inc., (Adam Cook, Legal Video
11	Specialist), 58 Battery March Street, Suite 243,
12	Boston, Massachusetts, 02110.
13	
14	<u>I N D E X</u>
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6	Wright with attachments Bates
7	Nos. 906 to 929 192
8	No. 4 Letter dated June 3, 2004 to
9	Eric Montgomery from Vicki B.
10	Roman with attachments Bates
11	Nos. 659 to 668 236
12	No. 5 E-mail dated November 6, 2002
13	to Vipin Mayar from Erik Fine
14	with Attachment Bates Nos.
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16	No. 6 E-mail dated August 18, 2003
17	to Elizabeth Janak from Alec
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19	No. 7 CAMR Turnover as of
20	August 11, 2003 Bates No. 117 278
21	No. 8 Service Request Activity (All)
22	consisting of five pages 284
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1	THE VIDEOGRAPHER: We are now
2	recording and on the record. My name is Adam
3	Cook. I'm a legal video specialist for National
4	Video Reporters. Our business address is at 58
5	Battery March Street, Suite 243, Boston,
6	Massachusetts 02110.
7	Today is October 17, 2005 and the time
8	is 11:08 a.m. This is the continued deposition of
9	Alec Kotopoulos in the matter of Steven R. Kincaid
10	versus Bank of America Corporation in the U.S.
11	District Court for the District of Massachusetts,
12	No. 04-11522-WGY.
13	This deposition is being taken at
14	Three Center Place, Boston, Massachusetts on
15	behalf of the plaintiff. The court reporter is
16	Patricia Henneberry of Mahaney Reporting Services.
17	Counsel will state their appearances
18	and the court reporter will administer the oath.
19	MR. FINE: David Fine for the
20	plaintiff, Steven Kincaid.
21	MS. SWEENEY: Siobhan Sweeney for the
22	defendant, Bank of America Corporation.
23	THE WITNESS: Alec Kotopoulos.
24	

OCTOBER 17, 2005

ALEC KOTOPOULOS

198

1 Q. Okay. And did you get a bonus for 2003?

2 A. That would have been paid when, in February

3 of 2004?

4 Q. My understanding is yes.

5 A. No.

6 Q. All right. I think there's something in

7 here that may cast light on this, and I don't want

8 to be unfair to you. So why don't we go to that

9 part of the personnel file.

10 If you look at -- go to the page

11 that's Bates marked Bank of America 919.

12 A. Yes.

13 Q. Okay. And this is the document that's

14 headed General Release and Separation Agreement --

15 A. Yes, I see that.

16 Q. -- do you see that?

17 A. Yes.

18 Q. And then if you could just turn initially

19 to --

20 A. You've jogged my memory. Okay. That's

21 fair.

22 Q. Okay. Before we get back to that, if you

23 could just look to Bank of America Page 925.

24 A. Yes.

199

1 Q. Is that your signature?

2 A. That is.

3 Q. And if you look at the next page, does your

4 signature appear on the next page as well?

5 A. Yes.

6 Q. All right. Now, going back to bank of

7 America Page 920 --

8 A. Yes.

9 Q. -- is there a reference to a bonus payment?

10 A. Yes.

11 Q. Okay. And what is --

12 A. \$75,000.

13 Q. Okay. And does that accord with your

14 recollection?

15 A. That does, yes.

16 Q. Okay. And do you recall what percentage of

17 your salary that bonus payment was?

18 A. I believe at that time my base was 175. So

19 if you cut that by 75,000 and do the math, what do

20 we have --

21 Q. Okay. So --

22 A. -- 40 odd percent.

23 Q. Okay. All right. Now, turning to the first

24 page of this document, Bank of America 919 --

200

1 A. Yes.

2 Q. -- okay, the first numbered paragraph says,

3 and let me quote it for the record and then I have

4 some questions.

5 "In consideration of the promises I

6 have made herein, I voluntarily tender and Bank

7 hereby accepts the mutual consent resignation of

8 my employment effective February 5, 2004;" do you

9 see that?

10 A. I do.

11 Q. Okay. How did it come about that you

12 resigned your employment with the bank?

13 A. I'm not sure I understand the question.

14 Q. Okay. Let me break it down. Were you asked

15 to resign?

16 A. Yes.

17 Q. Okay. Who asked you to resign?

18 A. Mr. Marino.

19 Q. And what position did Mr. Marino have at the

20 bank?

21 A. Human Resources.

22 Q. Okay. When did he ask you to resign?

23 A. It would have been right around the time

24 that this letter is dated.

201

1 Q. Okay. When Mr. Marino asked you to resign,

2 did he do that orally?

3 A. Yes.

4 Q. Was anybody else present?

5 A. Yes.

6 Q. Who else was present?

7 A. A lady. I think she was a paralegal.

8 Q. Okay. And where did this take place that

9 you were asked to resign?

10 A. I believe it was his office.

11 Q. Okay. Did he ask you to come to his office?

12 A. He did indeed.

13 Q. Did he tell you why he was asking you to

14 come to his office?

15 A. No, he did not.

16 Q. Okay. What did he say when you got to his

17 office?

18 A. I'm sorry, what did he say?

19 Q. Yes.

20 A. God's honest truth is I have blanked out

21 anything from back then from my complete memory on

22 purpose.

23 Q. Okay. And --

24 A. It was a very brief conversation.



202

1 Q. Okay. You say that you purposely blanked  
 2 things out from your memory?  
 3 A. Yes.  
 4 Q. Is there a reason why you purposely did  
 5 that?  
 6 A. I don't like to orient towards the past.  
 7 Q. Okay. You do remember that in that  
 8 conversation Mr. Marino asked you to resign?  
 9 A. Yes.  
 10 Q. Did you agree to resign in that meeting?  
 11 A. No, I did not.  
 12 Q. Okay. Do you remember anything that you  
 13 said in response to his requesting you to resign?  
 14 A. I remember pieces. I can't -- I can  
 15 paraphrase. I can't give you exact language in  
 16 all fairness.  
 17 Q. Okay. Please do your best to paraphrase  
 18 what was said.  
 19 A. You know a couple of bullet points would be,  
 20 I work incredibly hard here.  
 21 Q. This is what you're saying?  
 22 A. Alec, yes, personally.  
 23 And then I remember telling him that I  
 24 wanted a night to sleep on this.

203

1 Q. Okay. Do you remember anything else that  
 2 you said?  
 3 A. No. Honestly.  
 4 Q. Did you ask Mr. Marino why you were being  
 5 asked to resign?  
 6 A. The conversation never went there. It was  
 7 very brief.  
 8 Q. Okay.  
 9 A. I felt Mr. Marino was very -- I thought he  
 10 was trying to intimidate me. I don't deal well  
 11 with intimidation.  
 12 Q. Okay. And what about Mr. Marino's conduct  
 13 suggested to you that he was trying to intimidate  
 14 you?  
 15 A. When he asked me to come to his office, he  
 16 called me on my cell phone which is standard.  
 17 We're running around from meeting to meeting and  
 18 whatever else.  
 19 The way he talked to me was as though  
 20 I were his two-year-old son which I found very  
 21 unprofessional and didn't appreciate essentially  
 22 ordering me to come to his office. That was the  
 23 first thing.  
 24 And then just his -- and I'm not a

204

1 little person. Just his physical attitude to me  
 2 appeared to be someone who was trying to  
 3 intimidate another person.  
 4 Q. What is Mr. Marino like physically; is he a  
 5 big man?  
 6 A. He's probably a little smaller than I. I'm  
 7 six-one, 210, 215 pounds.  
 8 Q. Okay. When you came into -- was this his  
 9 office?  
 10 A. I believe it was his -- it was definitely an  
 11 office that he was sitting behind a table -- a  
 12 desk I mean.  
 13 Q. Okay. Did he ask you to sit down?  
 14 A. He did.  
 15 Q. The other person who was in the room, was  
 16 this a person that was known to you?  
 17 A. I've never met her in my life before.  
 18 Q. Was she identified by name to you?  
 19 A. She was.  
 20 Q. But you don't recall her name?  
 21 A. I honestly don't, no.  
 22 Q. Okay. Prior to this meeting where you were  
 23 being asked to resign, had you received a  
 24 performance review at the bank?

205

1 A. I don't believe I did. I don't believe  
 2 Vipin Mayar sat me down, he was my boss, M-A-Y-A-R  
 3 V-I-P-I-N.  
 4 I don't believe he sat me down at the  
 5 end of the year to have a performance review. I  
 6 don't recall that.  
 7 Q. Okay. From the time that you started at the  
 8 bank on September 30, 2002 to this meeting in  
 9 early 2004 where you were asked to resign, did you  
 10 ever have a performance review in that period?  
 11 A. I did.  
 12 Q. Okay. And when did you have a performance  
 13 review?  
 14 A. I certainly had one at the end of my first  
 15 quarter, so that would have been -- when did I  
 16 start, 2002?  
 17 Q. Yes.  
 18 A. Okay. So the end of 2002 somewhere near the  
 19 holiday period, Christmas holiday period. Then I  
 20 had another performance review somewhere into  
 21 2003, and I honestly do not recall exactly when.  
 22 Q. Okay. The performance review that you got  
 23 at the end of 2002, who gave that to you?  
 24 A. Vipin Mayar.

214

1 A. No.

2 Q. Did you speak to anybody at the bank about

3 what had occurred?

4 A. No. Because I went home and I did not come

5 back.

6 Q. You never came back to the bank?

7 A. Nope.

8 Q. Okay. Now, you see that if you go to page

9 Bank of America 925, your signature is dated

10 February 8, 2004; do you see that?

11 A. Correct.

12 Q. How much time elapsed between the date of

13 the meeting that you've described and February 8,

14 2004 when you signed this agreement?

15 A. I can't tell you exactly cause I can't

16 remember, but I will tell you that it was -- it

17 was a relatively short amount of time.

18 Q. Okay. And was the bank applying any time

19 pressure on you to get this done?

20 A. Oh, indeed.

21 Q. And how were they doing that?

22 A. They basically said you have X days to sign

23 this thing.

24 Q. Okay.

215

1 A. Isn't there a clause in here that says

2 that -- from what I remember. Wasn't there some,

3 you know, X period of time?

4 Q. Well, I don't know if this is what you're

5 referring to, Mr. Kotopoulos, but --

6 A. Right here.

7 Q. What --

8 A. No. 2, Time to sign a return agreement.

9 Q. Ah, all right. This is on BA 9/19?

10 A. 21 days.

11 Q. Okay. Paragraph 2 recites that you first

12 received the original of this agreement on or

13 before February 5, 2004; do you recall how much

14 time elapsed between the time of the meeting you

15 described and the time that you got this document

16 to review or your lawyer got this document to

17 review?

18 A. It wasn't long. It was a matter of days.

19 Q. Okay. Did anybody ever tell you why the

20 bank wanted you to resign and to resign so

21 quickly?

22 A. No.

23 Q. Did you have any idea at the time as to why

24 you were being asked to resign?

216

1 A. Yes.

2 Q. What was the idea that you had?

3 A. My estimation at that point in time was that

4 I was becoming the fall guy for Vipin Mayar and

5 HR.

6 Q. You said the fall guy for Vipin Mayar and

7 HR?

8 A. Correct. Human Resources.

9 Q. Okay. And the fall guy in what sense?

10 A. They needed to blame somebody within the

11 CAMR organization and the associated HR personnel

12 people who were attached to it for personnel

13 problems.

14 Q. What personnel problems?

15 A. My understanding was as a senior manager

16 that certain actions were being taken against the

17 bank by CAMR employees, some of whom were with the

18 bank, some of whom were not with the bank at that

19 time.

20 Q. Did you finish your --

21 A. I did.

22 Q. Okay. You said these people were taking

23 certain actions against the bank, what actions?

24 A. My assumption was, you know, making noise

217

1 and complaints about discharge or -- discharge in

2 some cases and in other cases unsatisfactory

3 performance reviews.

4 Q. Okay. And when you say making noise and

5 complaints, do you mean among other things filing

6 charges with the EEOC?

7 A. I never saw anything officially nor was that

8 mentioned to me. I do know however that in an

9 organization that large, I think we had 120, 130,

10 people, there are avenues for rumor that run

11 around not unlike in any organization that size or

12 even bigger.

13 And there was strong word that people

14 were seeking or had sought legal representation.

15 Q. Okay. Can you identify by name any of the

16 people that you're talking about?

17 A. I saw a memo, which to this day I would say

18 it was purposely left in a place where people

19 could see it or whoever put it there wanted it to

20 be seen if you will.

21 It was typed up by an employee that

22 made many comments. And I'm not a lawyer, but

23 many points, if you will, and comments about times

24 when that individual felt they were not properly



<p style="text-align: right;">218</p> <p>1 treated. And also a lot of energy, if you will,</p> <p>2 and angst towards not being promoted and ideas as</p> <p>3 to why.</p> <p>4 Mr. Mayar's name was listed</p> <p>5 innumerable times. My name was definitely</p> <p>6 mentioned, but maybe once or twice. And there was</p> <p>7 a third -- a second peer of mine, John Kuntz,</p> <p>8 K-U-N-T-Z, his name was mentioned as well.</p> <p>9 Q. Okay. Have you finished?</p> <p>10 A. I'm done.</p> <p>11 Q. Okay. All right. So this memo that was</p> <p>12 left in a place where people could see it</p> <p>13 complained about three people, Vipin Mayar</p> <p>14 primarily?</p> <p>15 A. Predominantly.</p> <p>16 Q. Predominantly.</p> <p>17 A. John Kuntz secondarily and Alec on a very</p> <p>18 tertiary, you know, small basis.</p> <p>19 Q. Okay. What was the name of the employee who</p> <p>20 left?</p> <p>21 A. Erin McCarthy, female, E-R-I-N.</p> <p>22 Q. Okay. And in this memo, was she complaining</p> <p>23 in effect about gender discrimination?</p> <p>24 A. Yes. That it was difficult for females</p>	<p style="text-align: right;">220</p> <p>1 A. Because I vaguely -- I remember the memo</p> <p>2 being long, first. I remember there being</p> <p>3 multiple, multiple angles leading up to -- let me</p> <p>4 do it differently. And I'm not trying to retract.</p> <p>5 I'm trying to give you a more succinct opinion.</p> <p>6 The memo to me appeared as though</p> <p>7 somebody was trying to prove a point, and to prove</p> <p>8 that point there were multiple kind of ways to</p> <p>9 prove the same point.</p> <p>10 The same point being, women were not</p> <p>11 afforded similar opportunities within the group,</p> <p>12 CAMR.</p> <p>13 This particular individual felt</p> <p>14 discriminated upon I think. So I believe, and</p> <p>15 again this is a few years ago, I believe the</p> <p>16 person used different angles or ways to get at</p> <p>17 that issue.</p> <p>18 Q. Did you ever have in your possession a copy</p> <p>19 of this memo?</p> <p>20 A. I had it the day I saw it on the</p> <p>21 whatchamacallit. I think it was on a Xerox</p> <p>22 machine, and I think I put it in my desk.</p> <p>23 Q. Did you ever give a copy of that memo to</p> <p>24 your lawyer?</p>
<p style="text-align: right;">219</p> <p>1 within that department, CAMR, to get promoted and</p> <p>2 have positions of -- status is the wrong word --</p> <p>3 but senior positions.</p> <p>4 Q. Did Miss McCarthy complain in words or</p> <p>5 substance about sexual harassment?</p> <p>6 A. That I don't remember. Honestly. I will</p> <p>7 tell you that I wouldn't rule it out because I</p> <p>8 remember it being at least three pages, maybe</p> <p>9 four.</p> <p>10 Q. Okay. And the claims of -- the possible</p> <p>11 claims of sexual harassment, were they made</p> <p>12 against --</p> <p>13 MS. SWEENEY: Objection.</p> <p>14 MR. FINE: Pardon?</p> <p>15 MS. SWEENEY: Go ahead and finish the</p> <p>16 question.</p> <p>17 MR. FINE: All right. Let me rephrase</p> <p>18 it.</p> <p>19 Q. You said that you wouldn't rule out the</p> <p>20 possibility of claims of sexual harassment having</p> <p>21 been made in this memo, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. Okay. What's the basis for your saying that</p> <p>24 you wouldn't rule that out?</p>	<p style="text-align: right;">221</p> <p>1 A. No.</p> <p>2 Q. What happened to the copy of the memo that</p> <p>3 was in your desk?</p> <p>4 A. Your guess is as good as mine.</p> <p>5 Q. You didn't take it with you when you left</p> <p>6 the bank?</p> <p>7 A. I did. I did. I had it in my briefcase. I</p> <p>8 did. I did take it with me.</p> <p>9 Q. Do you still have a copy of it today?</p> <p>10 A. No. I've thrown everything away.</p> <p>11 Q. Do you recall when you threw this memo away?</p> <p>12 A. A year ago or something maybe.</p> <p>13 Q. Was there something that caused you to throw</p> <p>14 it away at that time?</p> <p>15 A. Life moved on.</p> <p>16 Q. How much before the date that you were</p> <p>17 called into Mr. Marino's office did you see this</p> <p>18 memo?</p> <p>19 A. I don't know. I mean, it wasn't weeks. It</p> <p>20 was probably, you know, a fair amount of time</p> <p>21 prior to that.</p> <p>22 Q. Was it close enough in time to the meeting</p> <p>23 that you knew that that memo must be one of the</p> <p>24 reasons why you were being asked to resign?</p>

OCTOBER 17, 2005

ALEC KOTOPOULOS

222

1 A. A memo like that does not escape your memory  
2 while you're an employee of an organization in a  
3 senior position. So I think irrespective of time,  
4 and I don't mean to be rude, you know, that's  
5 almost timeless because it's serious.

6 Q. Did Mr. Marino make any reference to this  
7 memo --

8 A. No.

9 Q. -- in the meeting with you?

10 A. He did not.

11 Q. Is John Kuntz still employed by the bank?

12 A. He is.

13 Q. Is Vipin Mayar still employed by the bank?

14 A. No.

15 Q. To the best of your knowledge and belief,  
16 did the memo have anything to do with Vipin  
17 Mayar's leaving the bank?

18 A. I would assume absolutely.

19 Q. Okay. And why do you assume that?

20 A. Because the memo again had a lot of comments  
21 about him. And once the merger happened with  
22 Fleet Bank, when announcements came out about  
23 where people were going to land, if you will,  
24 Vipin Mayar was not on the chart. Twice.

223

1 There were two. There were two  
2 actually. The first memo that said, you know,  
3 here's the big, big, big picture, no mention of  
4 Vipin. And he's a pretty senior guy.

5 And then there was a more scaled down  
6 kind of underneath the big house schematic, and  
7 again no mention of Vipin Mayar.

8 Q. Okay. What you were just referring to was  
9 organizational charts?

10 A. No. A memo coming from I believe the head  
11 of marketing for the organization, Cathy Bessant,  
12 B-E-S-S-A-N-T.

13 Q. All right. And the big memo that you  
14 referred to, when did that come out?

15 A. Well, I think the merger announcement was  
16 made somewhere around Thanksgiving of -- what  
17 would have that been, two thousand and --

18 Q. Four perhaps?

19 A. Yes. So somewhere around Thanksgiving. And  
20 then the second memo would have been right into  
21 the new year, early in the new year from what I  
22 remember.

23 Q. All right. And these memos essentially  
24 indicated that Vipin Mayar was not in the bank's

224

1 future plans?

2 A. Well, no, no, no. These memos were  
3 distributed to all. And essentially they said,  
4 Here's the new structure of the organization going  
5 forward.

6 We still have more -- "we," meaning  
7 Human Resources, have more work to do to fill in  
8 some blanks underneath, but for the medastructure,  
9 if you will, the, you know, the grand structure of  
10 the organization, the building blocks were filled  
11 in and his name was not on one.

12 Therefore, one would very easily  
13 assume that something happened.

14 Q. Okay. Now, when these memos came out you  
15 were no longer employed by the bank yourself,  
16 correct?

17 A. No. I was with the bank, yes.

18 I mean, one was around Thanksgiving.  
19 I was there when the merger was announced. It was  
20 right after the merger. Weeks I think. And then  
21 the second memo. I was definitely there for the  
22 second memo as well.

23 Q. All right. So the way that you interpreted  
24 these memos the handwriting was on the wall for

225

1 Vipin Mayar?

2 A. I've been part of major corporations in the  
3 past, and I've been through plenty of reorgs, and  
4 mergers and when someone that senior does not end  
5 up on a org chart, it's not good.

6 Q. Okay. Now, in the first session of your  
7 deposition you mentioned that about a year --  
8 what's now a year and a half ago, Vipin Mayar  
9 called you to get together and you declined to get  
10 together with him?

11 A. That's correct.

12 Q. Did your declining to get together with him  
13 have anything to do with what happened with regard  
14 to Erin McCarthy's complaint?

15 A. Absolutely nothing.

16 Q. Okay. How do you account for John Kuntz  
17 still being at the bank since he was also  
18 mentioned in Erin McCarthy's memo?

19 MS. SWEENEY: Objection.

20 Q. I think Miss Sweeney is objecting for the  
21 record and you can answer the question.

22 THE WITNESS: Oh, okay. It's just  
23 bizarre. You're not representing me, but you can  
24 object. I understand. Okay.



OCTOBER 17, 2005

ALEC KOTOPOULOS

246

1 Q. Well, you were involved in the decision to  
 2 terminate certain employees, correct?  
 3 A. Absolutely.  
 4 Q. Did it ever come up in the discussions with  
 5 regard to the termination of certain employees as  
 6 to whether they would be eligible for rehire?  
 7 A. I don't recall that coming up.  
 8 Q. Ever?  
 9 A. I honestly do not recall that coming up. My  
 10 assumption is that it was an HR function.  
 11 Q. Mr. Kotopoulos, wasn't it one of the  
 12 standard things that was always asked with regard  
 13 to the termination of an employee whether the  
 14 employee would be eligible for rehire?  
 15 A. I do not recall a single instance where an  
 16 HR person asked me that question. That is the  
 17 truth.  
 18 Q. Okay. Did you ever communicate with anybody  
 19 to the effect that a particular employee should be  
 20 eligible for rehire?  
 21 A. I don't recall. I don't recall.  
 22 Q. Did you regard the bank asking you to agree  
 23 in writing that you would at no time seek  
 24 employment with the bank as a routine request?

247

1 A. No. It's probably not routine.  
 2 Q. Okay. Did anybody at the bank say to you or  
 3 to your lawyer to your knowledge why the bank was  
 4 asking for this?  
 5 A. I'm sorry, say that again please.  
 6 Q. Did anybody at the bank say to you or to  
 7 your lawyer to your knowledge why the bank was  
 8 asking you to agree to this in writing?  
 9 A. Oh, I'm sure they said it to my lawyer.  
 10 Q. And do you have any understanding as to the  
 11 explanation as to why the bank was asking for  
 12 this?  
 13 A. No.  
 14 Q. No idea?  
 15 A. My lawyer essentially said to me that -- a  
 16 couple of things.  
 17 Q. Okay. I'm not asking you to disclose a  
 18 communication that you had with your lawyer. I'm  
 19 simply asking you whether you have an  
 20 understanding as to why the bank was asking for  
 21 this?  
 22 A. I think the answer is yes.  
 23 Q. And what was your understanding?  
 24 A. They didn't want me around.

248

1 Q. All right. Did this suggest to you that the  
 2 bank was extremely displeased with some aspect of  
 3 your performance?  
 4 A. Yes.  
 5 Q. And what aspect of your performance did you  
 6 understand the bank to be displeased with?  
 7 A. Again, I think it all had to go back to the  
 8 people who were unhappy about performance ratings  
 9 and things like that and this issue of me becoming  
 10 a fall guy.  
 11 Q. Did you ever say to Mr. Marino or did you  
 12 ever direct your lawyer to communicate to the bank  
 13 in words or substance that in no way were you  
 14 going to agree to something like this?  
 15 A. No. I had had enough. It was time to move  
 16 on with my life. It was over respectfully.  
 17 There's a point in time where you just say enough  
 18 is enough.  
 19 Q. In agreeing to sign an agreement with a  
 20 provision such as this in it, did you recognize  
 21 that this agreement could be understood as an  
 22 acknowledgment by you that you had done something  
 23 wrong?  
 24 MS. SWEENEY: Objection.

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1 A. Yes.  
 2 Q. You did recognize that?  
 3 A. Yes.  
 4 Q. And did you believe that you had done  
 5 something wrong?  
 6 A. Sure.  
 7 Q. What had you done wrong?  
 8 A. When you're managing 36 people, no one's  
 9 perfect. You'll make mistakes.  
 10 If a company doesn't want you around,  
 11 it's very easy to come up with something in this  
 12 day and age.  
 13 Q. Okay.  
 14 A. So, you know, in their eyes I did something  
 15 wrong. We're also tenants -- not tenants at will,  
 16 but employees at will.  
 17 Q. Okay. And what was it that you did that you  
 18 felt that you can acknowledge that you had done  
 19 that was wrong?  
 20 MS. SWEENEY: Objection.  
 21 A. I'm going to ask you respectfully why I have  
 22 to answer a question like that when it has nothing  
 23 to do -- this is now becoming personal and  
 24 private, and in my eyes -- don't take this the



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1 wrong way. I don't mean to be disrespectful, but  
2 this is a private matter.  
3 Why do I have to disclose anything  
4 beyond what I've disclosed which I don't feel  
5 comfortable disclosing?  
6 Q. Well, Mr. Kotopoulos, you testified that  
7 when you were asked to resign you felt that you  
8 were being intimidated, right?  
9 A. Yes.  
10 Q. You felt that Mr. Marino was being unfair to  
11 you, right?  
12 A. I thought he was intimidating and I don't  
13 think he had -- I don't think he did his homework.  
14 Q. Well, do you think that in asking for your  
15 resignation the bank was being unfair to you?  
16 A. Yes.  
17 Q. Okay. How do you square that statement on  
18 the one hand with your acknowledgment on the other  
19 hand that you had done nothing wrong?  
20 A. Well, because to me it's a question of  
21 degree. One should look at the whole picture.  
22 Q. Okay. So notwithstanding your recognition  
23 that you had done something wrong, you felt that  
24 in the totality of things the bank should regard

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1 whatever you had done wrong as being excusable?  
2 A. I come back to the same answer. The bank  
3 did not want me around. At the end of the day I'm  
4 a smart person. They're smart people. It was  
5 just time to end everything and move on.  
6 Q. Okay.  
7 A. You know, am I flawed as a person, a human,  
8 sure. I've made some mistakes, but, you know --  
9 Q. Okay. Can you identify for us the mistakes  
10 that you made that led you to accept this  
11 particular provision of this agreement?  
12 A. Sure. I can tell you that, you know, on a  
13 few occasions I may have used some language --  
14 Q. Okay.  
15 A. -- because I was under intense pressure.  
16 It's not excusable, but I may have used some  
17 language that was inappropriate.  
18 You know I can also tell you that from  
19 a management style I worked very hard myself  
20 personally, set a very strong example with respect  
21 to working hard and performing. Pushed people  
22 hard but rewarded them very well, particularly  
23 those who performed.  
24 Q. All right. You didn't think that there was

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1 anything wrong with that, did you?  
2 A. No.  
3 Q. Okay. You do acknowledge that there was  
4 something wrong with language that you used on  
5 certain occasions?  
6 A. Sure.  
7 Q. Other than that, was there anything else  
8 wrong that you acknowledge that you did?  
9 A. No. Nothing was brought to my attention and  
10 I don't recall anything.  
11 Q. Okay. What was the language that you used  
12 that you regarded as wrong?  
13 A. I mean I might have said, you know, F every  
14 once in a while.  
15 Q. And did you ever say that to Erin McCarthy?  
16 A. No.  
17 Q. Did you ever say that in Erin McCarthy's  
18 presence.  
19 A. No.  
20 Q. Okay. Other than that, did you -- what  
21 other instances were there of using language that  
22 you regarded as being wrong?  
23 A. I mean, I don't know. I don't know. This  
24 is two, three years ago.

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1 Q. Okay. So you remember that you used  
2 language that you thought was wrong, but as you  
3 sit here today you don't remember what it was?  
4 A. I just told you that I may have used the F  
5 word on occasion. If you want the specifics of  
6 what date, with whom, where, all that, I can't  
7 remember that stuff.  
8 Q. Well, Mr. Kotopoulos, I think that the  
9 members of the jury will be familiar with the fact  
10 that people use profanity from time to time. All  
11 of us do.  
12 A. Yeah.  
13 Q. So there must have been something other than  
14 the mere use of profanity which caused you to say  
15 a moment ago that you used language that was  
16 wrong; isn't that fair?  
17 A. I don't know what you're trying to get at.  
18 I mean, I just mentioned nicely a couple of times  
19 I used language on occasion here and there.  
20 A couple of times I can remember it  
21 was an issue to myself, and that's, you know, one  
22 of the things I'm sure the bank said oops, no  
23 good.  
24 Q. Well, Mr. Kotopoulos you signed an

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ALEC KOTOPOULOS

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1 agreement --  
 2 A. Yes.  
 3 Q. -- where you promised that you would never  
 4 apply for employment with the Bank of America  
 5 again, right?  
 6 A. Correct.  
 7 Q. That was a pretty strong thing for you to  
 8 agree to, wasn't it?  
 9 A. No. Sir, I'll mention again. I had had  
 10 enough. It was actually easy. I had had enough.  
 11 I wanted to move on with my life. I  
 12 didn't want my wife and my kids to be stressed  
 13 with a husband and a father who was coming home  
 14 stressed. It was time to move on.  
 15 Q. I'd like you to turn to the page that's  
 16 Bates marked Bank of America 924. You see there's  
 17 a provision here in Paragraph 24, Attorneys' Fees  
 18 and Costs?  
 19 A. Yes.  
 20 Q. And each party agrees to be responsible for  
 21 your own attorneys' fees?  
 22 A. Yes.  
 23 Q. Did your attorney request any change in this  
 24 paragraph?

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1 A. No, not to my recollection.  
 2 Q. Did your attorney ever suggest to the bank  
 3 to the best of your knowledge that you might sue  
 4 the bank?  
 5 A. No.  
 6 Q. Did the bank ever suggest to you or your  
 7 attorney to your knowledge that the bank might sue  
 8 you?  
 9 A. No.  
 10 Q. Did it ever come to your attention that Erin  
 11 McCarthy was considering suing you or the bank?  
 12 A. No.  
 13 MR. FINE: I'd like to have marked as  
 14 the next exhibit pages that are Bates marked Bank  
 15 of America 903 to 905.  
 16 (Exhibit No. 5 E-mail dated November  
 17 6, 2002 to Vipin Mayer from Erik Fine with  
 18 attachment Bates Nos. 903 to 905 marked)  
 19 Q. Mr. Kotopoulos, I show you what's been  
 20 marked as an exhibit, and I would ask you to read  
 21 the three pages of this exhibit to yourself and  
 22 then I have a series of questions for you about  
 23 it.  
 24 A. Okay. Okay.

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1 Q. Okay. I want you to go to the first page of  
 2 this exhibit, and first of all I want to direct  
 3 your attention to the date that Erik Fine  
 4 apparently sent this e-mail to Vipin Mayer; do you  
 5 see that date?  
 6 A. I do.  
 7 Q. November 6, 2002?  
 8 A. Yes.  
 9 Q. Okay. Now, you had started with the bank on  
 10 September 30, 2002, correct?  
 11 A. Yes.  
 12 Q. So at the time of this e-mail you had been  
 13 at the bank for a little more than a month,  
 14 correct?  
 15 A. Yes.  
 16 Q. Okay. Now, if you go to the bottom of the  
 17 page, No. 1 --  
 18 A. Yes.  
 19 Q. -- the second sentence, you see where it  
 20 says, "You can use the attached spreadsheet that  
 21 Alec and I started"?  
 22 A. I do.  
 23 Q. Is the Alec that's being referred to there  
 24 you?

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1 A. Yes.  
 2 Q. Okay. Do you remember working on this  
 3 spreadsheet with Erik Fine?  
 4 A. Yes.  
 5 Q. Okay. How soon after you started working at  
 6 the bank did you first work with Erik Fine on this  
 7 spreadsheet?  
 8 A. I don't recall, but it would have been  
 9 somewhere around a little bit -- probably a little  
 10 bit before the memo came out.  
 11 Q. Okay. All right. And what did you  
 12 understand the objective of preparing this  
 13 spreadsheet was?  
 14 A. Vipin was informing my manager of several  
 15 people, all of whom are listed here, of the  
 16 financial impact I guess on his -- I don't know  
 17 what it was called, but his ledger, if you will,  
 18 if these folks were out.  
 19 Q. Okay. I think you said Vipin was informing  
 20 your manager, but did you not in fact --  
 21 A. I'm sorry, Erik. Erik was informing Vipin,  
 22 my manager.  
 23 Q. Okay. All right. But what role did you  
 24 have in preparing this spreadsheet?